

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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MIGUEL A. SEGARRA,

Petitioner,

v.

Case No. 10-CV-151

MICHAEL S. THURMER,

Respondent.

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**RULE 4 ORDER**

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The petitioner, Miguel A. Segarra, who is currently incarcerated at Waupun Correctional Institution, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241 and § 2254. The petition states that the petitioner was convicted of first degree reckless homicide. By his petition, the petitioner challenges the April 7, 2005, judgment of conviction on the following three broad categories: (1) ineffective assistance of counsel; (2) prosecutorial misconduct; and (3) judicial error.

Because the petition contains both exhausted and unexhausted claims, this court issued an order which provided the petitioner 30 days to inform the court whether he wished to voluntarily dismiss the entire petition or to dismiss only his unexhausted claims and proceed with his exhausted claims. By a letter dated June 20, 2010, the petitioner notified this court that he would like to dismiss his unexhausted claims and proceed on his exhausted claims. Thus, this petition will proceed on the following claims: (1) ineffective assistance of appellate counsel for (a) failure to challenge the illegality of the petitioner's initial arrest and the search incident to that arrest, and (b) failure properly to argue that the petitioner's confession was coerced and

should not have been admitted at trial; (2) prosecutorial misconduct; and (3) judicial error. This order will screen the petition with respect to these claims pursuant to Rule 4 of the Rules Governing Section 2254 Cases.

Upon review of the petition, this court is satisfied the petitioner is "in custody" pursuant to the conviction he now challenges. The court is also satisfied that the grounds stated by the petitioner in the petition translate, at least colorably, into a violation of his rights under the United States Constitution. Moreover, it appears from the petition that the petitioner either exhausted his state court remedies or there is no available state corrective process from which the petitioner can still seek a remedy.

Therefore, the court concludes that summary dismissal under Rule 4, Rules Governing Habeas Corpus Cases, is not appropriate since it does not plainly appear from "the face of the petition" that the petitioner is not entitled to relief. Consequently, the respondent will be called upon to serve and file an answer, motion or other response to the petition for a writ of habeas corpus. After the respondent's answer, motion or other response has been served and filed, the court will enter orders as necessary to facilitate the orderly progression of the action to disposition.

#### **ORDER**

**NOW, THEREFORE, IT IS ORDERED** that the respondent be and hereby is directed to serve and file an answer, motion or other response to the petition for a writ of habeas corpus no later than September 8, 2010.

The petitioner is hereby notified that, from now on, he is required, under Fed. R. Civ. P. Rule 5(a), to send a copy of every paper or document filed with the court to the respondent or

the respondent's attorney. The petitioner should also retain a personal copy of each document. If the petitioner does not have access to a photocopy machine, the petitioner may send out identical handwritten or typed copies of any documents. The court may disregard any papers or documents which do not indicate that a copy has been sent to each respondent or to the respondent's attorney.

**IT IS FURTHER ORDERED** that the Clerk of Court shall send a copy of this order and the file contents via the United States mail to Gregory M. Weber, Assistant Attorney General, Wisconsin Department of Justice, Office of Attorney General, P. O. Box 7857, Madison, Wisconsin 53701.

**IT IS ALSO ORDERED** that a copy of this order shall be mailed to the respondent.

Dated at Milwaukee, Wisconsin this 5th day of August, 2010.

BY THE COURT:

s/ Patricia J. Gorence  
PATRICIA J. GORENCE  
United States Magistrate Judge